IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTIETH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NOS. 13621; 13622 AND 13637 OF 2004

WRIT PETITION NO : 13621 of 2004

Between:

ITC Ltd., an existing Company, within the meaning of Companies Act, 1956, having its registered office at Virginia House, 37, Chowringhee, Kolkata-700 071 and a Branch Office for its Tobacco Division at S.D.Road, Secunderabad – 500 003, represented by its Branch Manager, Mr. Ashish E. Paul.

..... PETITIONER

AND

1. The Commercial Tax officer, Commercial Tax Department, S.D.Road Circle, Secunderabad.
2 The Commissioner of Commercial Taxes, State of A.P.,Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to a) Call for the records pertaining to the Impugned order and Demand dated 01/05/2004 for the assessment year 1998-99 from the Respondent No.1 viz., The Commercial Tax officer, S.D.Road circle, Secunderabad; b) quash the Impugned order/Demand by issuance of a Writ, more particularly one in the nature of a writ of Certiorari or any other appropriate writ, order or direction, while declaring the same as totally arbitrary, non- est and without jurisdiction; and (c) pass such further order or orders as this Hon'ble Court deems fit and proper in the facts and circumstances of the case including grant of costs of these proceedings and render justice.

For the Petitioner: Mr.C.R.Sridharan, Advocate.

For the Respondents: Mr. K. Raji Reddy, Special Standing Counsel for Commercial Tax.

WRIT PETITION NO : 13622 of 2004

Between:

ITC Ltd., an existing Company, within the meaning of Companies Act, 1956, having its registered office at Virginia House, 37, Chowringhee, Kolkata - 700071 and a Branch Office for its Tobacco Division at S.D.Road, Secunderabad – 500 003, represented by its Branch Manager, Mr. Ashish E. Paul.

..... PETITIONER

AND

1. The Commercial Tax officer, Commercial Tax Department, S.D.Road Circle, Secunderabad.
2. The Commissioner of Commercial Taxes, State of A.P.,Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to a) Call for the records pertaining to the Impugned order and Demand dated 07/05/2004 for the assessment year 2001-02 from the Respondent No.1 viz., The Commercial Tax officer, S.D.Road Circle, Secunderabad; b) quash the Impugned order/Demand by issuance of a writ, more particularly one in the nature of a writ of Certiorari or any other appropriate writ, order or direction, while declaring the same as totally arbitrary, non- est and without jurisdiction; and (c) pass such further order or orders

as this Hon'ble Court deems fit and proper in the facts and circumstances of the case including grant of costs of these proceedings and render justice.

For the Petitioner: Mr.C.R.Sridharan, Advocate.

For the Respondents: Mr.K. Raji Reddy, Special Standing Counsel for Commercial Tax.

WRIT PETITION NO : 13637 of 2004

Between:

ITC Limited, an existing Company, within the meaning of

Companies Act, 1956, having its registered office at Virginia

House, 37, Chowringhee, Kolkata - 700 071 and a Branch

Office, for its Tobacco Division at S. D. Road, Secunderabad -

500 003. Rep. by its Branch Manager Mr. Ashish E. Paul.

..... PETITIONER

AND

1 The Commercial Tax Officer Commercial Tax Department,
S.D. Road Circle, Secunderabad.
2 The Commissioner of Commercial Taxes, State of A.P,

Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to call for the records pertaining to the Impugned Order and Demand dated 05/05/2004 for the assessment year 2000 - 01 from the Respondent No.1 Viz., The Commercial Tax Officer, S.D. Road Circle, Secundrabad; B) Quash the Impugned Order/Demand by issuance of a Writ, more particularly one in the nature of a Writ of Certiorari or any other appropriate Writ, Order or direction, while declaring the same as totally arbitrary, non-est and without jurisdiction; and C) pass such further order or orders as this Hon'ble Court deems fit and proper in the facts and circumstances of the case including grant of costs of these proceedings and render justice.

For the Petitioner: Mr.C.R.Sridharan, Advocate.

For the Respondents: Mr. K. Raji Reddy, Special Standing Counsel for Commercial Tax.

The Court made the following:

COMMON ORDER: (per Sri B. Sudershan Reddy, J)

The petitioners in this batch of writ petitions challenge the proceedings of the 1st respondent requiring them to pay the interest at the rate of 36% per annum under Section 16 (3) (12) of the Andhra Pradesh Tax on Luxuries Act, 1987 on the ground that they have failed to pay the tax due in the stipulated time. The constitutional validity of the Act itself had fallen for consideration of the Supreme Court in ***GODFREY PHILLIPS INDIA LTD v. STATE OF UP***. The Supreme Court held that the State Legislature has no power to levy luxury tax on tobacco or tobacco products. Thus the petitioners are not required to pay any luxury tax itself and therefore, the question of payment of interest on tax does not arise. The subject matter that arises for consideration is squarely covered by the decision referred to hereinabove.

Following the said decision, these writ petitions are allowed. The impugned notices are accordingly quashed.

However, the respondents shall have the benefit of the observations made by the Supreme Court in paragraphs 97 and 98 of the said judgment. There shall be no

order as to costs.

(B. Sudershan Reddy, J)

20-04-2005

(C.V. Ramulu, J)

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Rule nisi has been made absolute as above. Witness the Hon'ble Sri Bilal Nazki, Acting Chief Justice on this Wednesday, the Twentieth Day of April, Two Thousand and Five.

ASSISTANT REGISTRAR

To

1. The Commercial Tax officer, Commercial Tax Department,

S.D.Road Circle, Secunderabad.

2 The Commissioner of Commercial Taxes, State of

A.P.,Hyderabad.

3 Two CD copies.

4. Two copies to the Special Standing Counsel for Commercial Tax, High Court of Andhra Pradesh, Hyderabad (OUT).